REMARKS

Claims 1-17 remain pending in this application, and claims 18-21 have been withdrawn. No claims have been amended, added or cancelled herein.

In the Office Action mailed 12/13/2007, claims 1-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Seidel et al. (U.S. 6,658,005) in view of Fong et al. (U.S. 6,760,860). Applicants respectfully traverse these rejections.

Claim Rejections – 35 U.S.C. § 103(a)

The Examiner rejects claims 1-17 under 35 U.S.C. 103(a) as being unpatentable over Seidel et al. (U.S. 6,658,005) in view of Fong et al. (U.S. 6,760,860). Applicants respectfully traverse this rejection.

Embodiments of Applicants' claimed invention provide methods and devices comprising unique combinations of method steps and features, respectively, including, *inter alia*, an apparatus for use in a mobile communication system that simultaneously transmits a control message over a control channel and data over a data channel, wherein the apparatus supports hybrid automatic repeat request (HARQ), the apparatus comprising: a physical layer for receiving the control message and the data from the control channel and the data channel respectively and for decoding the received control message and data; a physical layer's HARQ controller for processing a result of the decoding of at least one of the received control message and data and for controlling the physical layer according to a result of the processing; wherein the HARQ controller performs an operation of a MAC layer.

Seidel et al. does not disclose, teach or suggest such unique combinations of features or method steps.

The Examiner alleges that Seidel et al. discloses processing a result of the decoding of at least one of the received control message and data and controlling the physical layer according to a result of the processing (citing col. 7, lines 35-37 of Seidel et al.). Applicants respectfully disagree with the Examiner's analysis. Seidel et al. discloses sending ACK and NACK messages to the transmitter, as disclosed in col. 7, lines 35-37 of Seidel et al. However, nowhere does Seidel et al. disclose anything about processing a result of the decoding of at least one of the received control message and data and controlling the physical layer according to a result of the processing. Applicants submit that Seidel et al.'s disclosure of sending ACK and NACK messages to the transmitter on the physical layer has nothing to do with processing a result of the decoding of at least one of the received control message and data and controlling the physical layer according to a result of the processing.

The Examiner further alleges that Fong et al. discloses a physical layer's HARQ controller for processing a result of the decoding of at least one of the received control message and data and for controlling the physical layer according to a result of the processing; wherein the HARQ controller performs an operation of a MAC layer (citing col. 5, lines 9-18 of Fong et al.). Applicants respectfully disagree with the Examiner's analysis. Fong et al. discloses that the protocol layer operations are compliant with one of a number of various standards, which typically includes both layer 1 (physical layer) and layer 2 (e.g. Radio Link Protocol) components, wherein both layers support ARQ operations, as disclosed in col. 5, lines 9-18 of Fong et al. Nowhere does Fong et al. disclose a physical layer's HARQ controller for processing a result of the decoding of at least one of the received control message and data and for controlling the physical layer according to a result of the processing; wherein the HARQ controller performs an operation of a MAC layer. Applicants submit that Fong et al.'s disclosure has nothing to do with a physical layer's HARQ controller for processing a result of the decoding of at least one of the received control message and data and for controlling the physical layer according to a result of the processing; wherein the HARQ controller performs an operation of a MAC layer.

Seidel et al. discloses an RLC protocol, which is not a physical layer as disclosed in exemplary embodiments of the present invention, but the operation performed in the RLC layer. The cited column 7, lines 35-37 of Seidel et al. does not disclose the physical layer, as disclosed in exemplary embodiments of the present invention, but the operation of the RLC layer. The reason behind this is that processing time of the retransmission packet is increased when the retransmission packet is processed in the upper layer and not the physical layer (see the background section of the specification of the instant application).

Neither Seidel et al. nor Fong et al. alone, or in combination, disclose, teach or suggest such unique combinations of features or method steps discussed above.

Accordingly, Applicants' independent claim 1, as well as the dependent claims 2-17 (which incorporate, by reference, all of the features of their respective base claims) are distinguished from both Seidel et al. and Fong et al. at least for these reasons.
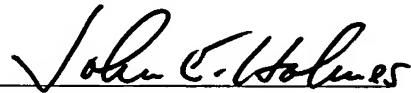
For at least these reasons, independent claim 1, as well as dependent claims 2-17, are distinguished from Seidel et al. nor Fong et al. and are allowable. Withdrawal of the rejections of claims 1-17 under 35 U.S.C. § 103(a) is respectfully requested.

Conclusion

Reconsideration of the above-identified application and allowance of claims 1-17 are respectfully requested.

In view of the above, it is believed that the application is in condition for allowance and notice to this effect is respectfully requested. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

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